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JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

October Term, 1903.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

THE AMERICAN BOOK COMPANY,
Plaintiff in Error,
vs.
THE STATE OF KANSAS, *ex rel.* GALEN NICHOLS, COUNTY ATTORNEY OF SHAWNEE COUNTY,
Defendant in Error.
} No. 126.

MOTION TO DISMISS, NOTICE, AND BRIEF FOR DEFENDANT IN ERROR.

QUINTON & QUINTON,
OTIS E. HUNGATE,
G. C. CLEMENS,
Counsel for Defendant in Error.

CRANE & CO., TOPEKA.

IN THE

Supreme Court of the United States.

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THE AMERICAN BOOK COMPANY,
Plaintiff in Error,
vs.
THE STATE OF KANSAS, *ex rel.* GALEN NICHOLS, COUNTY ATTORNEY OF SHAWNEE COUNTY,
Defendant in Error.
} **No. 126.**

NOTICE.

To the Attorneys for Plaintiff in Error:

You are hereby notified that on Monday, November 2, 1903, the defendant in error will submit to the Supreme Court of the United States the motion served herewith, documentary evidence in support thereof, and the accompanying brief.

Counsel for Defendant in Error.

IN THE

Supreme Court of the United States.

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Defendant in Error.
} No. 126.

MOTION TO DISMISS.

Now comes the said defendant in error and moves the court to dismiss this writ of error, for the reason that the plaintiff in error, after the rendition of the judgment complained of and before suing out said writ of error, fully complied with the statute of the State of Kansas mentioned in said judgment and upon which said judgment was based, and thereby acquired and now has full authority to do business in said State; so that there remains only a moot case before this court for hearing and decision, and its judgment could not "affect the result as to the thing in issue in the case before it."

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Counsel for Defendant in Error.

IN THE

Supreme Court of the United States.

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THE AMERICAN BOOK COMPANY,
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COUNTY ATTORNEY OF SHAWNEE COUNTY,
Defendant in Error.
} No. 126.

ON MOTION TO DISMISS.

BRIEF FOR DEFENDANT IN ERROR.

This was a *quo warranto* brought by the State of Kansas in its Supreme Court to oust the plaintiff in error, a New Jersey corporation, from doing business in the State without having complied with the State's laws in that regard. An attempt was made to couple with this an attack upon certain contracts already made by the corporation, but the court below having held that, as to this matter, it had no jurisdiction, of course that subject is not before this court. The judgment below was as follows:

That "the Company be ousted from the exercise of the right to transact business as a corporation in the

State of Kansas, *until its compliance with the statutes of this State*, providing for the making of an application to the Charter Board of the State of Kansas to do such business, and the filing of a certified copy of its charter or articles of incorporation, and a statement of the matters and things required by section 2 of chapter 10 of the Special Laws of 1898, and the payment of the fees required by law."

(Printed Record, pp. 31, 32.)

August 5, 1902, six days before the writ of error was sued out, the plaintiff in error did all the things required by this judgment, and fully complied with the law; so that a reversal of the judgment could give the plaintiff in error nothing it does not already enjoy, and, of course, only a legislative appropriation could give it back its charter fee. There is nothing here to decide but a moot case.

"The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the

plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal."

Kimball v. Kimball, 174 U. S. 158.
Mills v. Green, 159 U. S. 651.
Singer Manufacturing Co. v. Wright, 141 U. S. 696.
Little v. Bowers, 134 U. S. 547.
Flour Inspector v. Glover, 160 U. S. 170.
Codlin v. Kohlhausen, 181 U. S. 151.

QUINTON & QUINTON,
OTIS E. HUNGATE,
G. C. CLEMENS,
Counsel for Defendant in Error.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 126.

THE AMERICAN BOOK COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF KANSAS EX REL. GALEN NICHOLS, COUNTY ATTORNEY, &C.

STATE OF KANSAS,
Office of the Secretary of State.

[Vignette.]

I, J. R. Burrow, secretary of state of the State of Kansas, do hereby certify that the following and annexed is a true and correct copy of the record and proceedings had by and before the charter board of the State of Kansas with reference to application of the American Book Company, a corporation incorporated under the laws of the State of New Jersey, to be permitted to do business in the State of Kansas.

In testimony whereof I have hereunto subscribed my name and affixed my official seal. Done at Topeka, Kansas, this 28th day of October, 1903.

[Seal Secretary of State, State of Kansas.]

J. R. BURROW,
Secretary of State.

August 4, 1902, there was filed by the American Book Company with the secretary of state of the State of Kansas, as secretary of the charter board, a certain application, of which, with all the endorsements thereon, the following is a true copy:

Application for Authority to Engage in Business in the State of Kansas as a Foreign Corporation.

To the Charter Board of the State of Kansas:

The American Book Company, a corporation organized under the laws of the State of New Jersey, applies for permission to engage in business in the State of Kansas, and for that purpose submits the following statement, to wit:

FIRST.

A certified copy of its charter or articles of incorporation, which is filed herewith.

SECOND.

The place where the principal office or place of business of said corporation is located is 15 Exchange place, Jersey City, New Jersey.

THIRD.

The full nature and character of the business in which said corporation proposes to engage within the State of Kansas is supplying school text books.

FOURTH.

The names and addresses of the officers and trustees or directors are:

H. T. Ambrose, Orange, New Jersey.
A. C. Barnes, vice-president, Brooklyn, N. Y.
C. P. Batt, treasurer, Tarrytown, N. Y.
Gilman H. Tucker, secretary, New York city.
C. J. Barnes, Chicago, Ill.
H. B. Barnes, New York city.
L. M. Dillman, Chicago, Ill.
John Arthur Greene, New York city.
A. H. Hinkle, Bar Harbor, Maine.
D. B. Ivison, New York city.
W. B. Thalheimer, Cincinnati, Ohio.
Henry H. Vail, New York city.

FIFTH.

Resources.	Dollars. Cts.	Liabilities.	Dollars. Cts.
Bills receivable	$256,898.94	Capital paid up	$5,000,000.00
Real estate	1,820.71	Surplus	1,223,821.74
Personal property	5,287,557.11	Undivided profits	
Stocks, bonds, and other securities		Bills payable	448,500.00
Merchandise	1,255,380.31	Accounts payable	146,541.86
Cash on hand	190,357.97	Bonded indebtedness	800,000.00
Due from banks		Encumbrance on real estate or plant	
Accounts receivable	626,848.56		
Judgments			
Total	$7,618,863.60	Total	$7,618,863.60

SIXTH.

The amount of the capital stock of said corporation is five million dollars, divided into fifty thousand shares of one hundred dollars each.

We further state that the above application is made in good faith, with the intention that said corporation shall actually engage in the business specified and none other.

STATE OF NEW YORK, }
New York County, } ss:

I, H. T. Ambrose, president, and I, Gilman H. Tucker secretary, of the above-named corporation, do solemnly swear that the above is a full and complete statement of the resources and liabilities of said corporation as shown by the books of the same, and that said statement and the several matters and things contained in this application are true in every particular to the best of my knowledge and belief. So help me God.

H. T. AMBROSE, *President.*
GILMAN H. TUCKER, *Secretary.*

Subscribed and sworn to before me this 26th day of July, A. D. 1902.

[SEAL.] W. L. BILLMYER,
Notary Public, Kings Co., No. 75.

Cert. filed in N. Y. county.
(My commission expires March 30, 1904.)

TOPEKA, KANS., *Aug.* 5, 1902.

Received of Geo. A. Clark eleven hundred dollars, charter fee.

F. E. GRIMES, *St. Treas.*,
By C. R. RICHEY.

Together with a copy of the charter of said company and an alphabetical list of the stockholders of said company and their respective residences; said company having already filed, May 5, 1902, with the secretary of state, as secretary of said charter board, its irrevocable power of attorney, of which, with the resolution authorizing it, the following is a true copy:

Resolution by the American Book Company of New Jersey.

30TH APRIL, 1902.

At a meeting of the directors of the American Book Company, duly held at the office of said company on the 30th day of April, 1902, Mr. A. C. Barnes offered the following resolution and moved its adoption:

Resolved, That the president and secretary of this company be, and they are hereby, authorized and instructed to execute the written consent thereof to be sued in the State of Kansas in the manner provided in section 3 of an act of the legislature of the State of Kansas concerning private corporations, approved January 7, 1899.

The resolution was adopted.

STATE OF NEW YORK, }
County of New York, } ss:

Gilman H. Tucker, being duly sworn, says he is secretary of the American Book Company of New Jersey, and that the foregoing is a true and correct copy of a resolution adopted by the board of directors of said American Book Company on the 30th day of April, 1902, together with the minutes concerning said resolution.

GILMAN H. TUCKER, *Secretary.*

Sworn to and subscribed before me this 30th day of April, 1902.

[SEAL.] W. L. BILLMYER,
Notary Public, Kings County, No. 75.

Cert. filed in N. Y. county.
(My commission expires March 30, 1904.)

Know all men by these presents that the American Book Company, a corporation organized under the laws of the State of New Jersey and with its principal office at Jersey City, in said State, hereby consents, without power of revocation, that actions may be commenced against it, the said American Book Company, in the proper court of any county in the State of Kansas in which a cause of action against such corporation may arise, or may have heretofore arisen, or in which plaintiff may reside, by service of process on the secretary of state of the State of Kansas; and the said corporation stipulates and agrees that such service shall be taken and held in all courts to be as valid and binding as

if due service had been made upon the president or any other chief officer of said corporation.

In witness whereof said corporation has caused these presents to be executed by its president and its secretary and authenticated by its corporate seal at New York, in the State of New York, this 30th day of April, A. D. 1902.

[SEAL.] H. T. AMBROSE, *President.*

Attest: GILMAN H. TUCKER, *Secretary.*

Filed for record May 5, 1902.

GEO. A CLARK,
Sec'y of State.

[Endorsed:] Approved by charter board this 4th day of August, 1902. Morton Albaugh, Geo. A. Clark, State charter board.

And the said application, coming on to be heard before the charter board of the State of Kansas, was, August 5, 1902, duly granted by said board. Whereupon, by order of said board, the usual certificate was issued and delivered to said The American Book Company, of which said certificate the following is a true copy:

Certificate.

It is hereby certified that at a meeting of the charter board of the State of Kansas, duly and legally held at the capitol of said State on the 4th day of August, 1902, the application of the American Book Company, a corporation organized and existing under the laws of the State of New Jersey, to

engage in business within the State of Kansas, was heard, and in pursuance of action then taken thereon—

It is hereby further certified that said The American Book Company is, by the said charter board, authorized to engage in the business of supplying school text books in the State of Kansas until this certificate shall be revoked or said authority canceled in accordance with law.

Done at Topeka, Kansas, this 5th day of August, A. D. 1902.

[SEAL.] GEO. A. CLARK,

Secretary Charter Board of the State of Kansas.